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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **FEB 26 2015**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)


ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an education university. It seeks to permanently employ the beneficiary in the United States as a director of biblical studies. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The priority date of the petition is February 15, 2013.¹ The director determined that the petitioner had not established that the beneficiary possessed the minimum educational requirements of the labor certification by the priority date. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's degree in theology in biblical studies.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Not accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

Part J of the labor certification states that the beneficiary possesses a master's degree in theology in biblical studies from [REDACTED] Florida, completed in 2007. The record contains a copy of the beneficiary's master of theology in biblical studies certificate and transcripts from [REDACTED] completed in 2007.

¹ The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

Classification as an Advanced Degree Professional

The director found that the beneficiary's master of theology in biblical studies was not issued by an accredited U.S. institution. While the regulatory language of 8 C.F.R. § 204.5(k)(2) does not specifically state that a degree must come from an accredited college or university to qualify as an "advanced degree," the requirement is implicit in the regulation. As stated by the U.S. Department of Education (USDE) on its website:

The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. An agency seeking national recognition . . . must meet the Secretary's procedures and criteria for the recognition of accrediting agencies, as published in the *Federal Register* The Secretary . . . makes the final determination regarding recognition.

The United States has no . . . centralized authority exercising . . . control over postsecondary educational institutions in this country. . . . [I]n general, institutions of higher education are permitted to operate with considerable independence and autonomy. As a consequence, American educational institutions can vary widely in the character and quality of their programs.

. . . [T]he practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs. Private educational associations of regional or national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether or not they are operating at basic levels of quality.

. . . Accreditation of an institution or program by a recognized accrediting agency provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees.

www.ed.gov/print/admins/finaid/accred/accreditation.html (accessed February 11, 2015). The USDE's purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs.

Outside the federal sphere, the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. As stated on its website:

Presidents of American universities and colleges established CHEA [in 1996] to strengthen higher education through strengthened accreditation of higher education institutions

CHEA carries forward a long tradition that recognition of accrediting organizations should be a key strategy to assure quality, accountability, and improvement in higher education. Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established. CHEA will recognize regional, specialized, national, and professional accrediting organizations.

Accreditation, as distinct from recognition of accrediting organizations, focuses on higher education institutions. Accreditation aims to assure academic quality and accountability, and to encourage improvement. Accreditation is a voluntary, non-governmental peer review process by the higher education community The work of accrediting organizations involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.

www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf (accessed February 11, 2015).

The Act is a federal statute with nationwide application. The regulations implementing the Act, including 8 C.F.R. § 204.5(k)(2) defining “advanced degree” for the purposes of section 203(b)(2) of the Act, as well as 8 C.F.R. § 204.5(l)(2) defining “professional” for the purposes of section 203(b)(3) of the Act, also have nationwide application. As defined in 8 C.F.R. § 204.5(k)(2), an “advanced degree” includes “any **United States academic or professional degree** . . . above that of baccalaureate” (or a foreign equivalent degree), “[a] **United States baccalaureate degree**” (or a foreign equivalent degree) and five years of specialized experience (considered equivalent to a master’s degree), and “a **United States doctorate**” (or a foreign equivalent degree). (Emphases added.). Similarly, “professional” is defined in 8 C.F.R. § 204.5(l)(2) as “a qualified alien who holds at least a **United States baccalaureate degree**” (or a foreign equivalent degree). (Emphasis added.). The repeated modifier “United States” to describe the different levels of (non-foreign) degrees makes clear the intention of the rule makers that the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis. The only way to assure nationwide recognition for its degrees is for the educational institution to secure accreditation by a regional accrediting agency approved by the USDE and CHEA. *See Yau v. INS*, 13 I&N Dec. 75 (Reg. Comm. 1968) (a degree issued by an unaccredited institution does not qualify as a professional within the statute granting preference classification.).

The record reflects that FCU is not accredited by a U.S. accrediting organization recognized by CHEA and the USDE. *See* www.chea.org/pdf/CHEA_USDE_AllAccred.pdf and www.chea.org/search (accessed February 11, 2015).

The petitioner contends that [REDACTED] legally operates under the Florida Religious Freedom Restoration Act of 1998 and has the legal authority to award a degree. The petitioner notes that [REDACTED] is certified by the Council of Private Colleges of America, Inc. (CPCA) and the Florida Council of Private Colleges, Inc. (FCPC) whose standards are higher than USDE's standards for recognized agencies. The record contains a letter from the CPCA stating that [REDACTED] has been "certified" by CPCA and the FCPC since [REDACTED] and asserts that "certification" versus "accreditation" merely indicates that Title IV funding is not available. However, as discussed above, the Act and regulations require a nationally recognized degree which can only be assured through accreditation by a USDE recognized accreditation agency. *See Yau v. INS*, 13 I&N Dec. at 75. Further, these contentions and statements are inconsistent with information provided on the FCPC and CPCA websites. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

According to its website, the FCPC is a voluntary membership organization serving degree granting faith-based institutions in Florida. The FCPC accepts faith-based institutions that do not take government funds in the USA, excluding institutions with USDE recognized accreditation. *See* www.fcpc-edu.org/ (accessed February 19, 2015). Membership in FCPC is fee based and does not require a peer evaluation of the institution and its programs which, as discussed above, is essential to assurance of quality and acceptance of the institution's diplomas and degrees.

While CPCA states on its website and in its letter that it engages in a quality peer review of institutions, it also recognizes that if accreditation "is to be meaningful, it must come from an independent association having attained its own approval from the United States Department of Education." While [REDACTED] has the legal authority to award degrees in Florida and is certified by FCPC and CPCA, it is not accredited by a USDE recognized accreditation agency. As discussed above, the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis, which can only be assured through accreditation by a USDE recognized accreditation agency. *Id.*

The petitioner contends that [REDACTED] degrees should be accepted by USCIS because they are accepted by the local government. To support its contention the petitioner provides copies of degrees issued by [REDACTED] and under its previous name, [REDACTED] to [REDACTED]. The resume of [REDACTED] reflects that he has held positions with [REDACTED] Florida, government departments and programs. The resume of [REDACTED] reflects that he has held a position with the [REDACTED], Florida, Department of Juvenile Justice. However, whether these individuals' degrees from [REDACTED] formerly [REDACTED] are required for these positions is unclear. Moreover, whether [REDACTED] degrees are accepted by government offices in Florida is not relevant in establishing that degrees from [REDACTED] meet the requirements under the Act. As discussed above, the Act and regulations require a nationally recognized degree which can only be assured through accreditation by a USDE recognized accreditation agency. *Id.*

Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a master's degree in theology in biblical studies from an accredited U.S. institution.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.